

EQUITY EXAM NOTES:

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EQUITABLE ESTOPPEL

A doctrine to protect a party from the detriment that would flow from that party's change of position if the assumption or expectation that led to it were to be rendered groundless by another as per *The Bell Group Ltd (in liq) v Westpac Banking Corporation*.

Promissory Estoppel: Where one party has either by words or conduct made a promise or assurance in which intended to affect the legal relationship between the parties and is subsequently relied and acted upon as per Eng case of *Combe v Combe*. Equity will bind the promisor to their word, requiring no consideration.

Proprietary Estoppel: equity binds the owner of property who induces another to expect that an interest in property will be conferred on them as per *Waltons Stores (Interstate) Ltd v Maher*.

EQUITABLE ESTOPPEL TEST (Main: Representation, reliance, detriment) (Brennan J in *Waltons Stores v Mahers*)

1. Clear and unambiguous representation: The representation must be clear and unequivocal *Bartport v Bomb; Legione v Hateley; Newbon v City Mutual Life Assurance Society Ltd*. The language must be reasonably understood in a sense by a person to who it is addressed to *Freeman v Cooke*. If not in writing, the promise or expectation perceived from that representation may be expressed or implied.

'I'll look after you after...' is not a clear and unequivocal representation *Crown Melbourne v Cosmopolitan Hotel*

STATE: Nettle J suggests no need for contractual certainty whereas Keane J in *Crown* suggests you do need it.

Note: There can be no promise or representation by mere silence during pre-contractual negotiations *Blackley Investments Pty Ltd v Burnie City Council*

2. An assumption made by the plaintiff who is induced by words, action or conduct:

- *Salienta* (Assumed rent deduction) Plaintiff must have been under the assumption that a legal relationship is present.
- Onus to prove that assumption is reasonable *Franklins v Metcash* affirmed the requirement.

The assumption is a result of conduct by the defendant... the conduct does not need to be the sole reason for the assumption, rather it needs to be a significant factor *Sidhu v Van Dyke*. (Didn't miss out even though she was cheating)

Cth v Verwayen 4 non-exhaustive categories of conduct:

- a. Induced the assumption by express or implied representation
- b. Entered a contractual or other material relation with the other party on the conventional basis of the assumption
- c. Has exercised against the other party rights which would exist only if the assumption were correct
- d. Knew that the other party laboured under the assumption and refrained from correcting him when it was his duty in conscience to do so.

CONSIDER: The HCA **did not reference** assumption requirement in '*Cth v Verwaye*' and *Douehi* does not require application in cases of **proprietary estoppel**....

3. Plaintiff demonstrated a reliance: Where the plaintiff has been induced by the defendant's representation, one must establish that the plaintiff acted or refrained from acting in reliance on the assumption as per *Priestly v Priestly*.

Onus of proof is on the relying party to establish that they relied on the representation - *Sidhu v Van Dyke*

There needs to be a causal link between the assumption and conduct - *Miler Heiman v Sales Principles*

Lower threshold: Contributory cause or influence not 'but for test' - *ADM v FDGK*

REASONABLE RELIANCE LIMBS - *Commonwealth Bank of Australia v Carotino*

- a) it must be reasonable to adopt the assumption based on the strength of the representation and
- b) the action taken from the reliance must be reasonable... **CONSIDER:** Emotional relationship or commercial?

- Legal representation/resources (less likely) *Austotel*
- Accustomed to commercial relationships (less likely)
- Causal or informal environment (*Sterns Trading* less likely)
- The bargaining strength of the parties (*Austotel Pty Ltd v Franklins Selfserve*)
- If person making assertion has actual/ostensible authority to do so (*Legione v Hateley* more likely)
- **STATE:** Ostensibly objective but has subjective aspects to it in that it considers the knowledge of the parties *Austotel Pty Ltd v Franklins Selfserve Pty Ltd*
- Constructive knowledge of the representations suggest lack of authority (*Legione v Hateley*)
- Urgency (*Waltons* more likely)

4. Defendant demonstrated a knowledge or intention: The representator must know or intend that the relying party will act or will refrain from acting as a result of the reliance of the assumption of expectation. *Waltons Stores (Interstate) Ltd v Maher*

Note: Contention on whether the threshold of 'ought to have known' is enough to constitute knowledge...

Waltons suggests no | *Commonwealth v Verwayen* suggests yes – supported by *New Zealand Pelt's export company Ltd v Trade Indemnity New Zealand Ltd*

- [END OF SAMPLE)

<i>Waltons Stores v Maher, High Court of Australia, Brennan J</i>	
Key Facts	• Maher negotiated a new lease and new building to Waltons. • To do so, the old building had to be demolished. Waltons led Maher to believe a contract would be formed. • But, they did not want to sign it. They told their solicitors to 'go slow'. • They did this knowing that Maher was demolishing old building and allowed it to continue.
Decision	• Equitable estoppel applied and Waltons were estopped